THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 488 of 2001.
(Old FAFO No. 1220 of 1990)

Jaikirit Singh Son of Shri Puran Singh, Resident of village Kuhed, P.O. Chamoli, Tehsil and District Chamoli.

… Appellant.

Vs.

1. Dinesh Chandra Bhatt, Teacher, District Basic Education Officer, Office Gopeshwar, Chamoli
   (Claimant)
2. The National Insurance Company Gopeshwar,
   District Chamoli.

…Respondents.

Sri Rajendra Dobhal , learned counsel for the appellant.
Sri Lalit Belwal, Adv., learned counsel for the Insurance Company.

Date June 08, 2006

P.C.: Hon'ble B.S. Verma, J.

This present appeal under Section 173(1) of the Motor Vehicles Act, 1988 (***for short the new Act***) is directed against the judgment and award dated 31.7.1990, passed by the then Motor Accident Claims Tribunal Chamoli (***for short the Tribunal***) passed in Claim Petition No. 8 of 1988, Dinesh Chandra Bhatt Vs. Jaikirit Singh and another, whereby a compensation of 35,000/- was awarded to the claimant along with interest @ 9% per annum. Out of this amount, the owner of the vehicle Jaikrit Singh was ordered to pay Rs. 10,000/-, and the insurer was directed to pay a sum of Rs. 25,000/- to the claimant within one month and in default of payment, claimant was ordered to get interest @ 9% per annum from the respective parties. Aggrieved Jaikrit Singh, owner of the vehicle, has come up in appeal.

At the outset, it may be mentioned that on 14-2-1988 a motor accident involving Bus No. USY-3298, took place due to rash and negligent driving by its driver with the result some passengers sustained fatal injuries and died and some of them suffered grievous injuries including claimant Dinesh Chandra Bhatt. The accident occurred near place Baidanu (Langasu)

Karnprayag. The claimants, who were dependents/legal heirs of the deceased as well as injuried preferred different claim petitions before the Motor Accident Claims Tribunal Chamoli, which were decided by separate judgment and awards. Earlier A.O.Nos. 989 of 2001, National Insurance Company Ltd. Vs. Awtar Singh and A.O. No. 493 of 2001, National Insurance Company Vs. Atma Ram and another, which arose out of Claim petition No. 6 of 1988 and Claim petition No. 9 of 1988 were already decided vide judgment dated 12-04-2006 by this Court. A reference to that judgment shall be made in the body of this judgment at appropriate place. Both the said appeals were allowed in part in view of earlier judgment dated 16-08-2004 passed in ***A.O. No. 990 of 2001, National Insurance Company Vs. Smt. Mathura Devi and others*** and the compensation awarded by the learned Tribunal was affirmed. Cases were sent back to the Tribunal for bifurcation of the amount between the Insurance Company and owner of the bus as per provisions of the old Act of 1939.

The relevant facts necessary for a just decision of the appeal are the injured claimant filed claim petition under Section 110-A of the Motor Vehicles Act, 1939 for compensation of Rs. 50,000/- for the accidental injuries suffered by him involving the bus in question, which was being driven rashly and negligently by its driver. Jaikirit Singh, the owner of the vehicle, filed his written statement, denied the allegations made in the claim petition and pleaded that he had sold the bus to one Saukin Singh on 24-3-1987 and that the vehicle was duly insured at the time of sale, therefore, after sale of the bus, the answering opposite party was not responsible for the compensation. On the pleadings of the parties, the learned Tribunal framed necessary issues in the case, recorded the evidence led by the parties, heard them and after perusing the evidence on record came to the conclusion that a criminal case was registered against the driver of the bus in question, who confessed his guilt before the Magistrate. The injured-claimant appeared in

the witness box as P.W.1 and had given ocular account of the accident. He deposed that he was also travelling in the same bus and sustained grievous injuries on head and other parts of body including fracture of shoulder bone. He clearly deposed that the bus was being driven rashly and negligently by the driver. On the other hand, the driver of the bus Sridhar Prasad appeared in the witness box as D.W.1, who tried to save his skin from the liability, but he admitted that he confessed the guilt before the Magistrate regarding the same accident. Considering the oral and documentary evidence, it was held that the accident occurred due to the negligence on the part of the driver and not due to mechanical defect. Ultimately, the claim petition was decreed as mentioned above.

I have heard learned counsel for the appellant as well as learned counsel for the respondent and perused the material on record including the impugned judgment and award.

Learned counsel for the appellant argued that the finding of the Tribunal on the point of negligence is not based on evidence on record. The argument is not tenable for the reasons given herein. ***Firstly,*** the record reveals that the driver of the bus was charge-sheeted by the police and criminal proceedings were drawn in the court of the Magistrate against the driver on the basis of F.I.R. lodged with the police. Moreover, the driver confessed his guilt before the Munsif Magistrate Karnprayag. It is thus prima facie proved that the driver of the bus was negligent in driving, otherwise he would not have confessed his guilt. ***Secondly,*** the evidence of P.W.1, Dinesh Chandra is on record, who had been travelling by the ill-fated bus and sustained injuries in the accident, clearly supports the contention that the bus driver was negligent. I have perused the evidence on the point. The learned Tribunal has rightly held that the driver of the bus was negligent in driving the

vehicle at the relevant time. The finding on the issue of negligence recorded by the learned Tribunal is affirmed.

On the other hand, learned counsel for the Insurance Company has urged that the learned tribunal has not considered the provisions of the Old Act and this Court while deciding A.O. No. 990 of 2001 National Insurance Company Vs. Smt. Mathura Devi vide judgment and order dated 16-9-2004 has already sent back the case to the learned Tribunal for bifurcation of the amount to be paid to the claimants by the Insurance Company and owner of the vehicle n question as per provisions of the Old Act. Learned counsel for the insurance company further submitted that the appeal may be dismissed on merit so far as the finding on the point of negligence is concerned. Accordingly, on the basis of that judgment, other appeals, namely, A.O. No. 989 of 2001, National Insurance Co. Vs. Awtar Singh and A.O. No. 493 of 2001, National Insurance Company Vs. Atma Ram were sent back to the Tribunal on the same line.

In view of the discussion aforesaid, this appeal being correlated with A.O.No. 990 of 2001, decided on 16-8-2004, is liable to be sent back to the Tribunal for bifurcation if the amount to be paid to the claimants by the Insurance Company and owner of the bus in question as per provisions of the Old Act. It is pertinent to mention that the finding of the Tribunal has already been affirmed on the point of quantum of compensation. The finding on the point/issue of negligence is hereby upheld. The learned Tribunal shall hear the appellant Jai Kirit Singh and respondent no.2 as well as Insurance Company while deciding the liability between the owner of the vehicle and Insurance Company. The matter shall be confined to the bifurcation of compensation amount between the owner and the insurance alone.

In view of the above, the appeal is dismissed on merit so far as issue on the point of negligence and quantum is concerned. Accordingly, the matter is sent back to the learned Tribunal as directed in other appeals by this Court. The learned counsel for the appellant shall ensure that the copy of this order is placed before the learned Tribunal concerned.

(B.S.Verma, J.)

RCP